THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 29762 OF 1997

Date: 26.03.2007

Between:

Ch. Krishnaiah.

... Petitioner.

And

The Presiding Officer, Labour Court, Guntur and three others.

... Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 29762 OF 1997

ORDER:

Aggrieved by the award of the labour Court, Guntur in I.D. No. 1137 of 1992 dated 06.01.1995, the present writ petition is filed.

The petitioner, a conductor, was issued a charge memo for the following irregularities:

"For having issued less luggage of Rs.1.80 ps, for 6 dhobi clothe bundles (each weighing 20kgs) instead of actual luggage chargeable forRs.7.50 ps even though you have collected Rs.18.00 towards passenger fare and luggage from a batch of three passengers who boarded your bus at Kondapalli and found a lighting at "Radham i.e., ex-state 2 to 11/12 along with the said luggage which constitutes misconduct under Reg. 28(vi) (a) and (xxv) of APSRTC employees (Conduct) Reg. 1963.

For having discharged your duty with fraudulent motive by not issuing tickets for the entire amount of Rs.18/- collected and issued tickets worth of Rs.10.80 only and an amount of Rs.7.20 ps was kept with you towards illegal gratification which constitutes misconduct under Reg. 28(x) of APSRTC employees (Conduct) Reg. 1963."

On these charges being held established in the departmental enquiry final orders were passed on 20.01.1992 removing the petitioner from service. Aggrieved thereby the petitioner preferred an appeal which was also rejected by order dated 18.05.1992. Aggrieved thereby the petitioner approached the labour Court. Before the labour Court the petitioner contended that the TTI had foisted a false case against him without properly recording the statements of passengers and that recording of such statements was contrary to the instructions issued by the A.P.S.R.T.C in M.T.D. No. 267. The petitioner herein contended before the labour Court that, due to non-mention of the address of the passengers, he had lost an opportunity to call them as

witnesses before the enquiry officer to prove his innocence in the domestic enquiry, that, except for one of the TTIs, no other witness was examined to prove the charges levelled against him and that the enquiry officer did not afford him an opportunity of cross-examining the witness. The petitioner also contended that the punishment, imposed on him of removal from service, is grossly disproportionate. The labour Court noted that the petitioner had collected Rs.18/- from the passengers and had issued tickets only for Rs.9/- and luggage ticket of Rs.1.80 ps and was due a sum of Rs.7.20ps to the passenger. The labour Court disbelieved the petitioner's evidence and held that the petitioner never attempted to return the amount due to the passenger. The labour Court also noted that the petitioner had not chosen to cross-examine the TTI regarding his having recorded the statements of passengers. The labour Court held that, in a domestic enquiry, strict and sophisticated rules of evidence under the Indian Evidence Act did not apply and all materials which were logically probative for a prudent mind were permissible and that there was no allergy to hearsay evidence provided it had reasonable nexus and credibility. The labour Court relied on the judgment of the Supreme Court in **State of Haryana Vs. Rathan Singh**[1]. The labour Court held that the TTI was examined and that the enquiry officer had recorded a finding that the three passengers had travelled as a batch and had paid Rs.18/- as bus fare and luggage fare and that he did not see any reason to disbelieve his evidence. The labour Court held that the enquiry officer was justified in relying on the evidence of the TTI. The

labour Court held that, if the petitioner had any intention of returning the change to the passengers, he would have definitely endorsed the change due on the tickets and that the petitioner had never attempted to return the amount due to the passengers while they were alighting from the bus. The labour Court held that the evidence on record clearly established that the petitioner had collected Rs.18/- towards the bus fare and luggage fare and had issued less luggage tickets and had retained Rs.7.20 ps with him. The labour Court held that the findings of the enquiry officer was supported by evidence and any reasonable person would draw the conclusions which were drawn by the enquiry officer. On the question of punishment the labour Court relied on the judgment of this Court in W.A. No. 213 of 1992 dated 23.03.1992 and held that for the misconduct held established the petitioner could not have been saddled with the penalty of removal from service which was in the nature of economic death and that withholding of backwages and stoppage of one increment with cumulative effect would meet the ends of justice. The labour Court directed reinstatement of the petitioner without backwages but with continuity of service and imposed on him the punishment of stoppage of one increment with cumulative effect.

Before this Court Sri S.A.K. Moinuddin, learned Counsel for the petitioner, reiterates the very same submissions. Learned Counsel would submit that the enquiry stood vitiated for violation of principles of natural justice, that despite the instructions issued by the corporation in this regard the TTIs had not recorded the addresses of the passengers thus denying the petitioner an

opportunity to summon them as his defence witnesses, that the findings of the enquiry officer were erroneous and that, in any event, the punishment imposed was grossly disproportionate to the charges held established.

It is well settled that this Court, in certiorari proceedings under Article 226 of the Constitution of India, would not sit in appeal over findings of fact recorded by Industrial Tribunals/Labour Courts. The labour Court, on appreciation of the evidence on record, has held that the findings of the enquiry officer were supported by the evidence on record and that any reasonable person would draw the same conclusions as were drawn by the enquiry officer. The labour Court held that failure to examine the passengers, whose statements were recorded by the TTIs, did not vitiate the enquiry since the TTI, who had recorded their statements, was examined in the enquiry and was made available for cross-examination. It is well settled that strict and sophisticated rules of evidence under the Indian Evidence Act do not apply to departmental enquiries and the degree of proof required to establish a charge of misconduct is preponderance of probabilities and not proof beyond reasonable doubt. It is not necessary that the passengers, whose statement were recorded by the TTI, should be examined in the departmental enquiry and failure to comply with administrative instructions issued in this regard cannot be said to be in violation of principles of natural justice. As the TTI, before whom the passengers had made their statement, was examined in the departmental enquiry, and was made available for cross-examination, failure to examine the

passengers or to note their addresses is of no consequence. It is well settled that failure to examine witnesses, who had either given a complaint or whose statements had been recorded in the preliminary enquiry, would not vitiate either the departmental enquiry or the punishment imposed as long as the evidence adduced in the enquiry is sufficient to establish the charges levelled against the delinquent employee. In this context reference can usefully be made to the judgments of the Supreme Court in **The East India Hotels Vs. Their Workmen**[2], **Rattan Singh**[1] and **J.D. Jain Vs. State Bank of India**[3]).

In **Karnataka State Road Transport Corporation Vs. B.S. Hullikatti**[4], the Supreme Court observed that it is the responsibility of bus conductors to collect correct fares from the passengers and deposit the same in the Corporation, that conductors act in a fiduciary capacity, it would be gross misconduct if knowingly they did not collect any fare or the correct amount of fare and that, in such cases, interference with the punishment of dismissal from service was a case of misplaced sympathy by the Labour Court. In **Regional Manager, Rajastan State Road Transport Corporation Vs. Ghanshyam Sharma**[5], the Supreme Court held that the proved acts amounted either to a case of dishonesty or of gross negligence and bus conductors, who by their actions or inactions cause financial loss to the Corporation, are not fit to be retained in service. In **V. Ramana Vs. A.P.S.R.T.C.**[6], the Supreme Court held that Courts/Tribunals

should not interfere unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court/Tribunal.

The charge held established against the petitioner are of his having collected a higher amount towards bus and luggage fare by issuing tickets for lesser denomination and to have retained Rs.7.20 with him. For the charges held established against the petitioner, the labour Court has, in exercise of its jurisdiction under Section 11-A of the Industrial Disputes Act, modified the punishment of removal from service to that of denial of backwages and with holding of one increment with cumulative effect. It cannot be said that the punishment as substituted by the labour Court is one which shocks the conscience of this Court or is a punishment which could not have been imposed at all. The discretion exercised by the labour Court, under Section 11-A of the Industrial Disputes Act, to modify the punishment imposed by the employer does not necessitate interference in certiorari proceedings under Article 226 of the Constitution of India. The writ petition fails and is accordingly dismissed. No costs.

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Date: 26.03.2007 RAMESH RANGANATHAN, J

MRKR

[1] AIR 1977 SC 1512

[2] AIR 1974 SC 696

[3] AIR 1982 SC 673

[4] AIR 2001 SC 930

[5] 2002(1) LLJ 234

[6] AIR 2005 SC 3417